

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KENNETH MARSHALL,

Petitioner,

v.

**WARDEN, PICKAWAY
CORRECTIONAL INSTITUTION,**

Respondent.

CASE NO. 2:14-CV-812

JUDGE GREGORY L. FROST

Magistrate Judge Elizabeth P. Deavers

OPINION AND ORDER

On June 9, 2015, the Magistrate Judge issued a *Report and Recommendation* denying Petitioner's *Motion for Relief from Judgment* and "*Rule 54 Judgment on the Pleadings*", and recommending that Respondent's *Motion to Dismiss* be granted. Petitioner has filed an *Objection* to the Magistrate Judge's *Report and Recommendation*.

Petitioner maintains that he has provided the state courts an adequate opportunity to review his claims. He claims that he is being denied appellate review due to his indigent status. He contends that the denial of counsel excuses his failure to exhaust state court remedies.

As discussed by the Magistrate Judge, however, Petitioner must present his claims to the state's highest court in order to satisfy the exhaustion requirement. *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). He has not done so. He may still pursue a delayed appeal in the Ohio Supreme Court. Further, Petitioner has no Sixth Amendment right to counsel in connection with the discretionary appeal to the Ohio Supreme Court. *See Pennsylvania v. Finley*, 481 U.S. 551, 555, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987) ("[T]he right to appointed counsel extends to the first appeal of right, and no further.").

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. Petitioner's *Objection*, ECF 31, is **OVERRULED**. The *Report and Recommendation*, ECF 29, is **ADOPTED** and **AFFIRMED**. Petitioner's *Motion for Relief from Judgment* and "*Rule 54 Judgment on the Pleadings*" are **DENIED**. Respondent's *Motion to Dismiss* is **GRANTED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

/s/ GREGORY L. FROST
GREGORY L. FROST
United States District Judge